

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOINE D. JOHNSON, M.D.,

Plaintiff,

v.

GRAYS HARBOR COMMUNITY
HOSPITAL; GRAYS HARBOR
COMMUNITY HOSPITAL MEDICAL
STAFF; GRAYS HARBOR
COMMUNITY HOSPITAL
GOVERNING BOARD; KI SHIN, MD;
TIM TROEH, MD; BRENT ROWE,
MD; GREGORY MAY, MD; DANIEL
CANFIELD, MD; ROBIN
FRANCISCOVICH, MD; THOMAS J.
HIGHTOWER, MD; SHELLY
DUEBER, MD; and DOES 1 through 50
inclusive,

Defendants.

CASE NO. C06-5502BHS

ORDER DISMISSING GRAYS
HARBOR COMMUNITY
HOSPITAL MEDICAL STAFF
AND GRAYS HARBOR
COMMUNITY HOSPITAL
GOVERNING BOARD AND
GRANTING DEFENDANTS-
APPELLEES TROEH, ET AL.'S
MOTION FOR PROTECTIVE
ORDER TO QUASH SUBPOENAS
TO MOLINA REPRESENTATIVES
AND ED ROSS

This matter comes before the Court on Defendants-Appellees Troeh, et al.'s Motion for Protective Order to Quash Subpoenas to Molina Representatives and Ed Ross (Dkt. 281). The Court has considered the pleadings filed in support of and in opposition to the motion, the parties' submissions in response to the Court's order to show cause, and the remainder of the file herein, and hereby dismisses Grays Harbor Community

1 Hospital Medical Staff and Grays Harbor Community Hospital Governing Board and
2 grants the motion for protective order for the reasons stated herein.

3 **I. BACKGROUND AND DISCUSSION**

4 All claims have previously been dismissed against all Defendants with the
5 exception of Plaintiff's claims against Grays Harbor Community Hospital Medical Staff
6 and Grays Harbor Community Hospital Governing Board. Dkt. 146; Dkt. 266. In the
7 Court's most recent order granting summary judgment, the Court noted that these
8 Defendants were not subject to the various motions for summary judgment then pending
9 before the Court:

10 In their answer, Defendants Grays Harbor, Dr. Rowe, and Mr.
11 Hightower deny that the Grays Harbor Community Hospital Medical Staff
12 and the Grays Harbor Community Hospital Governing Board are legal
13 entities or are proper parties to this case. Dkt. 12 at 3. As noted by Dr.
14 Johnson, these parties are not subject to the pending motions. Dkt. 256 at 17
n.2. Dr. Johnson is therefore ordered to show cause, if any he may have, why
the Court should not dismiss all claims against the Grays Harbor Community
Hospital Medical Staff and the Grays Harbor Community Hospital
Governing Board with prejudice.

15 Dkt. 266 at 35. This issue has been fully briefed and is ripe for decision by the Court.

16 Also pending before the Court is Defendants-Appellees Troeh, et al.'s Motion for
17 Protective Order to Quash Subpoenas to Molina Representatives and Ed Ross (Dkt. 281).
18 Defendants Troeh, May, Canfield, Franciscovich, and Duber seek to quash subpoenas to
19 representatives of Molina Health Care Incorporated and Ed Ross. Dkt. 281. Other
20 Defendants join in the motion. Dkt. 282; Dkt.292. Plaintiff contends that the motion is
21 moot because all claims against the moving Defendants and joining Defendants have been
22 dismissed. Dkt. 287. Whether the Grays Harbor Governing Board and Medical Staff are
23 proper parties to this suit has direct bearing on whether the disputed subpoenas should be
24 quashed, and the Court has therefore considered the pending matters concurrently.

25 **A. MOTION TO STRIKE**

26 As a threshold matter, Dr. Johnson moves to strike Defendant GHCH's Response
27 to "Plaintiff's Response to Court Order of 25 March 2008" on the grounds that the filing
28

1 is out of order and was not contemplated by the Court's order to show cause. Dkt. 295 at
2 2. The Court directed Plaintiff to show cause on or before April 18, 2008, permitted
3 Defendants to respond to Plaintiff's showing on or before April 28, 2008, and permitted
4 Plaintiff to reply on or before May 1, 2008. Dkt. 266 at 35-36. The response Plaintiff
5 seeks to strike complies with the briefing schedule established by the Court, and Plaintiff
6 has had a full and fair opportunity to respond to all filings on this issue. The motion to
7 strike is therefore denied.

8 **B. MEDICAL STAFF AND GOVERNING BOARD**

9 After reviewing the parties' submissions, the Court concludes that Plaintiff's
10 claims against the Grays Harbor Community Hospital Medical Staff and Grays Harbor
11 Community Hospital Governing Board should be dismissed with prejudice.

12 First, Plaintiff fails to establish that these Defendants were served as required by
13 Federal Rule of Civil Procedure 4. Plaintiff contends that he effected service on the Grays
14 Harbor Governing Board and Medical Staff by serving John Mitchell. Plaintiff fails to
15 refute Mr. Mitchell's contention that he is not authorized to accept service on behalf of
16 these Defendants. *See* Dkt. 277.

17 Second, Plaintiff's submissions in the response to the Court's order to show cause
18 demonstrate that he seeks to impose liability on the medical staff and the governing board
19 for claims that have been dismissed on summary judgment, such as those against Dr.
20 Troeh. Dkt. 286 at 12-17. Dr. Johnson cannot maintain causes of action against these
21 Defendants for claims that have been dismissed on summary judgment. Dr. Johnson's
22 claims against the medical staff and governing board of Grays Harbor Community
23 Hospital are therefore dismissed with prejudice.

24 **C. MOTION TO QUASH**

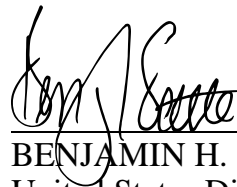
25 As there are no remaining claims or Defendants in this matter, the Motion for
26 Protective Order to Quash Subpoenas (Dkt. 281) is granted.

II. ORDER

Therefore, it is hereby

ORDERED that Defendants-Appellees Troeh, et al.'s Motion for Protective Order to Quash Subpoenas to Molina Representatives and Ed Ross (Dkt. 281) is **GRANTED**, and Defendants Grays Harbor Community Hospital Medical Staff and Grays Harbor Community Hospital Governing Board are **DISMISSED with prejudice**.

DATED this 15th day of May, 2008.


BENJAMIN H. SETTLE
United States District Judge